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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 35, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF MAINE, ET AL.,

Defendants.

(Massachusetts Boundary Case)

REPORT OF THE SPECIAL MASTER

WALTER E. HOFFMAN
Senior United States
District Judge
Norfolk, Virginia
Special Master

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REPORT OF THE SPECIAL MASTER

INTRODUCTION

On March 17, 1975, the Court announced its basic ruling in this case. Invoking the Submerged Lands Act, 43 U.S.C. 1301, *et seq.*, the Outer Continental Shelf Lands Act, 43 U.S.C. 1331, *et seq.*, and prior decisions, the Court held that each of the 13 States bordering on the Atlantic Ocean, including the Commonwealth of Massachusetts, is only entitled to a belt of seabed extending three geographical miles from its coastline. 420 U.S. 515. That decision was subsequently formalized in a Decree, declaring the rights of the States in the seabed three miles from the coastline and the rights of the United States in the submerged lands beyond. 423 U.S. 1 (1975). As in like judgments, the Decree provided that the "coastline," or baseline for delimiting state ownership and jurisdiction, shall be "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of in ard

waters." *Id.* at 2. The Decree did not otherwise delimit the coastline of each defendant State. Accordingly, the Court expressly reserved jurisdiction to entertain further proceedings, "including proceedings to determine the coastline of any defendant State," and all parties were given leave to file a motion for such supplemental proceedings. *Ibid.*

The United States and the Commonwealth of Massachusetts did not agree on the baseline from which the three-mile belt should be measured and, in January, 1977, they jointly moved the Court to entertain supplemental proceedings and to appoint a Special Master for that purpose. On June 29 of the same year, the Court appointed the undersigned as Special Master in the case. 433 U.S. 917 (1977). The Order of appointment authorized the Special Master, *inter alia*, "to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings," and instructed him "to submit such reports as he may deem appropriate." *Id.* at 917-918.

In due course, the United States filed with the Special Master a Memorandum in lieu of a Complaint describing its claims and the Commonwealth filed a Memorandum in lieu of an Answer setting forth its own claims. The resulting dispute centers on the status of Massachusetts Bay, Buzzards Bay, Vineyard Sound, and Nantucket Sound as inland waters of the Commonwealth. The parties have engaged in extensive discovery, and several conferences have been held before the Special Master to discuss and resolve procedural matters.

Prior to the initiation of evidentiary hearings, the parties advised the Special Master that settlement negotiations were actively progressing, and the proceedings were accordingly held in abeyance for some months. On June 30, 1980, the United States and the Commonwealth of Massachusetts executed a Memorandum of Settlement, subject to the approval of the Special Master and of the Court.

A conference was held before the Special Master on July

24, 1980, in order to brief him on all of the aspects and underlying considerations of the Settlement. On that day, the Special Master, in the presence of counsel, was afforded the opportunity of an extensive low-level aerial viewing of the geographic areas that are crucial to the terms of the Settlement. After full consideration of its terms, the Master has concluded that the Settlement is fair, equitable, and just.

There are two major aspects to this Settlement Agreement. The first provides for the resolution of the dispute as to Vineyard Sound and Nantucket Sound, contingent, however, upon the successful completion of the federal administrative process to designate a certain portion of the disputed area as a federal marine sanctuary, pursuant to 16 U.S.C. 1641, *et seq.* This aspect of the Settlement is not the subject of the present Report.

This Report deals with the second aspect of the Settlement, which is confined to those areas that the parties have agreed to settle with finality, regardless of the outcome of the administrative proceedings referred to above. The parties propose to fix the closing lines for Massachusetts Bay and Buzzards Bay. In essence, the Commonwealth accepts the federal lines within Massachusetts Bay, and the United States accepts the Commonwealth's line at Buzzards Bay. These closing lines are described in the proposed Supplemental Decree appended to this Report and are depicted on the appended charts.

Notice of the recommended proposed decree has been given to each of the other States, parties in No. 35, Original, and no State has shown any cause why the decree should not be entered.

DISCUSSION

The two sovereigns have agreed upon appropriate closing lines within Massachusetts Bay and for Buzzards Bay. They join in urging the entry, at this time, of a decree fixing

those portions of the Massachusetts coastline. In the view of the Special Master, such action is entirely appropriate.

1. It is doubtful whether any official of the Executive Branch can indefinitely and irrevocably bind the federal government; only a decree can surely settle the matter with finality. The Agreement of the parties is conditioned upon the entry of such a decree, placing the issue beyond further controversy, except only in the event subsequent geographical changes so alter the physical coastline as to justify an application to the Court to vary the Decree.

The proposed Decree does not purport to adjust a boundary without reference to applicable law, or leave the matter open for subsequent "arbitration." *Compare Vermont* v. *New York*, 417 U.S. 270 (1974). On the contrary, after years of active controversy over the dividing line between federal and state submerged lands, the parties have agreed upon the correct application of settled legal principles to specified segments of the boundary, now proposed to be fixed with finality. Without purporting to adjudicate the matter independently, the Special Master has reviewed the proposed decree and concludes that it embodies a wholly reasonable construction of governing law. In these circumstances, the Court may properly enter the consent Decree without violating Article III of the Constitution. *See New Hampshire* v. *Maine*, 426 U.S. 363 (1976).

2. It remains only to comment on the appropriateness of entering a decree at this time with respect to the areas identified, without awaiting resolution of all disputes in the cause.

In like cases, the Court has often entered decrees defining portions of a State's coastline and the three-mile belt of submerged lands seaward of that line. That has been done after contested issues have been resolved by the Court. *E.g.*, *United States* v. *California*, 382 U.S. 448 (1966), 439 U.S. 30 (1978). And the same course has been followed with respect to areas no longer in dispute. *E.g.*, *United States* v. *Louisiana*, 382 U.S. 288 (1965), 404 U.S. 388 (1971), 409 U.S. 17 (1972);

United States v. *California*, 432 U.S. 40 (1977). No reason appears why those precedents ought not be followed here.

The segments of the coastline to which the proposed Decree refers can be clearly identified without necessary reference to the other portions of the coastline still contingently disputed. Should the contingent Settlement fail, requiring further proceedings, the entry of the proposed Decree will have substantially narrowed the controversy and is, therefore, in the interest of judicial economy. The resolution of the remaining issues would unavoidably require substantial additional time, and, in the interim, it is in the interest of both sovereigns to fix with certainty so much of the boundary defining their respective submerged lands as may now be adjudicated. To that extent, conflicting jurisdictional and proprietary claims will be set to rest and the administration of the adjudicated areas may proceed without controversy.

It should be stressed that entry of the proposed Decree encompassing the issues now ready for final resolution will in no way delay or embarrass any further proceedings. Nor is it believed that the Court will be unduly burdened by now entertaining the proposed Decree. The parties have jointly prayed for its submission to the Court and neither party will except to the recommendations of this Report. In these circumstances, the Court presumably will deem it unnecessary to require briefing and argument on the Report. Unless the Court otherwise directs, the parties have indicated that they will submit to the Court a joint statement endorsing the Report of the Special Master and urging entry of the appended proposed Supplemental Decree.

CONCLUSION

The Special Master recommends:

1. That the proposed Supplemental Decree appended hereto be entered by the Court;

2. That the original reference of the cause to the Special Master be continued on the same terms; and

3. That the Special Master shall, in due course, submit a final Report to the Court at the conclusion of any further necessary proceedings in respect of issues not resolved by the present proposed Decree.

Respectfully submitted,

Walter E. Hoffman
Senior United States District Judge
Special Master

May 26, 1981

APPENDICES

APPENDIX A

IN THE

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OCTOBER TERM, 1979

No. 35, Original

UNITED STATES OF AMERICA,

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vs.

STATE OF MAINE, ET AL.,

Defendants.

(Massachusetts Boundary Case)

PROPOSED SUPPLEMENTAL DECREE

The Court's Special Master having filed a Report recommending the entry of a supplemental decree for the purpose of defining with greater particularity the boundary line between the submerged lands of the United States and the submerged lands of the Commonwealth of Massachusetts, as contemplated by the Court's Decree of October 6, 1975, 423 U.S. 1, and the Court's Order of June 29, 1977, 433 U.S. 917, appointing the Honorable Walter E. Hoffman as Special Master in this cause, and the United States and the Commonwealth of Massachusetts having stated their acquiescence in the recommendations of the said Report:

It is ORDERED, ADJUDGED, and DECREED as follows:

1. The coastline of the Commonwealth of Massachusetts, as that term is used in the Court's Decree herein dated October 6, 1975, shall be, in the area hereafter specified:

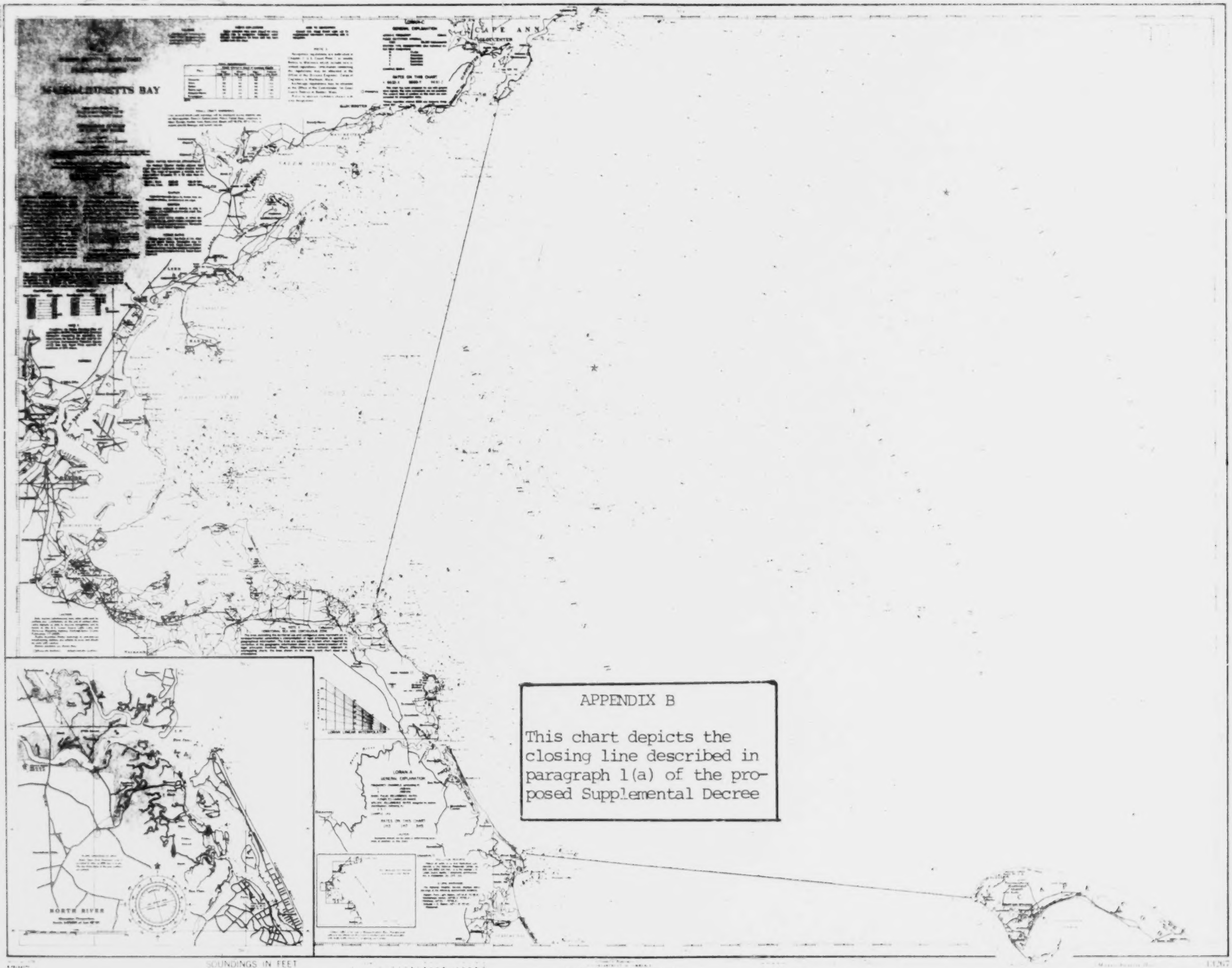
(a) A straight line running southwesterly from a point on the mean low water line at Eastern

Point on Cape Ann (approximately 42° 34'45"N, 70° 39'43"W on NOS Chart 13267, 18th Ed.) to a point on the mean low water line seaward of Strawberry Point (approximately 42° 15'31"N, 70° 46'05"W on the same NOS Chart), thence southeasterly along the line of ordinary mean low water (including closing lines across Scituate Harbor and the North River) to Brant Rock (approximately 42° 05'29"N, 70° 38'15"W on the same NOS Chart), thence a straight line running easterly to a point on the mean low water line at Race Point on Cape Cod (approximately 42° 03'46"N, 70° 14'51"W on the same NOS Chart);

(b) A straight line running southeasterly from a point on the mean low water line at Gooseberry Neck (approximately 41° 28'43"N, 71° 02'05"W on NOS Chart 13218, 21st Ed.) to a point on the mean low water line on the southwestern extremity of Cuttyhunk Island (approximately 41° 24'44"N, 70° 57'07"W on the same NOS Chart).

2. The reference to the Special Master appointed by the Court on June 29, 1977, is continued in effect, under the terms of the Court's Order of that date, and he is directed to proceed with the cause, holding such further proceedings as may seem advisable until all remaining issues referred to him are ready for submission to the Court by his further report.

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.



APPENDIX B

This chart depicts the closing line described in paragraph 1(a) of the proposed Supplemental Decree

13267

SOUNDINGS IN FEET

13267

SOUNDINGS IN FEET

MARTHA'S VINEYARD
TO
BLOCK ISLAND

APPENDIX C

This chart depicts the closing line described in paragraph 1(b) of the proposed Supplemental Decree

R H O D E I S L A N D S O U N D

13218